

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 113

Service of Process

SPONSOR(S): Frishe

TIED BILLS: None

IDEN./SIM. BILLS: SB 412

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	9 Y, 0 N	DeZego	De La Paz
2)	Military & Local Affairs Policy Committee		Fudge	Hoagland
3)	Criminal & Civil Justice Policy Council			
4)	Policy Council			
5)				

SUMMARY ANALYSIS

The term service of process refers to the legal delivery of a writ, summons or other process intended to place an interested party on notice of legal proceedings. This bill increases fees charged by a sheriff in connection with docketing and service of process in civil cases from \$20 to \$40. The State of Florida or its agencies are exempted from the increase in fees. This bill also deletes the provision of law that prohibits additional fees to be charged by the sheriff for successive attempts at service.

The county sheriff may serve any form of process. Additionally, non-enforceable civil process may be served by a special process server (certain private individuals). This bill adds criminal witness subpoenas and criminal summons to the types of process that can be served by a special process server.

Civil executions are court orders directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor's property. For the purpose of the sheriff's distribution of surplus to judgment lienholders, this bill revises the process for carrying out executions by amending how the priority of liens will be determined and the information that must be included in the affidavit required in connection with a personal property levy and a real property levy.

County sheriffs have a duty to serve injunctions for protection against domestic or sexual violence received from the clerk of court. Currently, sheriffs must serve the original injunction to the respondent, which can cause a delay in these time-sensitive situations. This bill allows the clerk of court to send the county sheriff a certified facsimile copy of an injunction for protection against domestic or sexual violence, and this facsimile copy can be served by the sheriff in the same manner as a certified copy.

The Revenue Estimating Conference has determined that the provisions of this bill will have no fiscal impact on state government and a positive fiscal impact of \$42 million on local governments in fiscal year 2009-10.

This bill does not appear to have a fiscal impact on state government. See Fiscal Comments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Statutes governing service of process are strictly construed to insure that defendants receive notice of an action against them and have the opportunity to protect their rights. There are two types of service of process: enforceable and non-enforceable. Enforceable service is a court order which requires the sheriff to take action such as make an arrest or seize property. Non-enforceable service of process is designed to place another party on notice that he or she must take action.

Civil executions are court orders directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgment debtor's property. Writs of execution are issued to a sheriff or officer of the court that directs and authorizes the sheriff or officer to carry into effect the judgment of the court.¹ In 2001, Florida established a statewide docketing system for civil writs of execution where priority among creditors is based on the date of lien filing.

Effect of Bill

Persons Authorized to Serve Process

Current law

Florida law establishes three categories of persons by whom process may be served in Florida. These persons include a sheriff, a person appointed by the sheriff in the sheriff's county (known as a special process server) and a certified process server appointed by the chief judge of the circuit court.² Section 48.021(1), F.S., provides that all process, except non-enforceable civil process, must be served by the sheriff of the county where the person to be served is found.³ Non-enforceable civil process may be served by a special or certified process server. Currently, only the county sheriff or a deputy sheriff may serve criminal witness subpoenas and criminal summonses.

¹ *Raulerson v. Peeples*, 81 Fla. 206, 87 So. 2d 629 (1921).

² *Abbate v. Provident Nat. Bank*, 631 So. 2d 312 (Fla. 5th DCA 1994).

³ Types of non-enforceable service of process include summons, subpoenas, orders to show cause, injunctions, notices, and writs of garnishment.

Furthermore, the chief judge of each judicial circuit may establish an approved list of natural persons who can serve as certified process servers and may periodically add names to the list of natural persons who have met the requirements for certification provided for in s. 48.29, F.S.⁴ A person may select from the list for the circuit where the process is to be served, one or more certified process servers to serve initial nonenforceable civil process.⁵

Proposed Changes

The bill amends s. 48.021(1), F.S., to add that criminal witness subpoenas and criminal summonses may also be served by a special process server or a certified process server. This bill also amends s. 48.021(1), F.S., to provide that any person authorized by the civil rules of procedure may also serve civil witness subpoenas.⁶

This bill amends s. 48.27, F.S., to provide that the addition of a person's name to the list of approved certified process servers authorizes him or her to serve criminal witness subpoenas and criminal summonses within the circuit in addition to initial nonenforceable civil process. It further provides that the state in any proceeding or investigation by a grand jury or any party in a criminal action, prosecution, or proceeding may select a person from the list to serve a subpoena or summons.

Unsatisfied Executions

Current Law

In 2001, Florida established a statewide docketing system for civil writs of execution. Prior to October 2001, a writ of execution had to be filed with the sheriff in the specific county where the assets were located. This was problematic because a debtor could avoid judgment liens by moving personal property from county to county. A lienholder would have to withdraw the writ of execution from one county and file it with a new county whenever property was moved from one county to another. The date of the writ was the most recent filing, which then affected the priority of such liens.

Sections 55.201 to 55.209, F.S., effective October 1, 2001, provided a system of obtaining a judgment lien on personal property by filing a judgment lien certificate with the Department of State. This established priority among creditors statewide based upon the date of lien filing, rather than requiring a race from county to county in search of leivable property.

Section 56.041(2), F.S., provides that all unsatisfied executions in the hands of the sheriff may be returned to the court issuing the execution 20 years after the date of issuance of final judgment upon which the execution was issued.

Proposed Changes

This bill amends s. 56.041(2), F.S., to provide that sheriffs may return all unsatisfied executions docketed before October 1, 2001. This effectively disposes of writs of executions still held by sheriffs that were deposited before the statewide docketing system created in 2001.

Execution Sales and Payment of Money Received Under Executions

Current Law

Section 56.21, F.S., provides that notice of all sales under execution must be given by advertisement once each week for 4 successive weeks in a newspaper published in the county in which the sale is to take place. When personal property is levied upon, a notice of such levy and execution sale and a copy of an affidavit required by s. 56.27(4), F.S., must be sent by the sheriff to all judgment creditors.

⁴ Section 48.27(1), F.S.

⁵ Section 48.27(2), F.S.

⁶ Fla.R.Civ.P. 1.410(d) provides that a civil subpoena may be served by any person authorized by law to do so who is not a party to the proceedings and is 18 years of age or older.

When real property is levied upon, notice of such levy and execution sale must also be made to the property owner of record in the same manner as notice is made to any judgment debtor.

All money received under executions must be paid, in the order prescribed, to the following:

- The sheriff for costs of the sale;
- The levying creditor in the amount of \$500 as liquidated expenses;⁷
- If the levy is on real property, the judgment lienholder of first priority under s.55.10, F.S.;
- If levy is on personal property, the judgment lienholder having the earliest recorded judgment lien acquired under ss. 55.202, 55.204(3), F.S. or 55.208(2), F.S., or his or her attorney, provided the judgment lien is not satisfied;
- Other judgment creditors in the order of priority of their filed liens if the monies exceed the amount necessary to satisfy the above;⁸ and
- The debtor, who receives any remaining funds.

Section 56.27(4), F.S., provides that the levying creditor must deliver to the sheriff an affidavit prior to the first publication or posting of the notice of sale. The affidavit must contain the following information about the judgment debtor:

- A verification that the levying creditor has reviewed the database or judgment lien records and that the information in the affidavit based on that information is true and correct;
- Information required under s. 55.203, F.S.,⁹ for each judgment lien certificate, the file number assigned to the judgment lien, and the date of filing for each judgment lien certificate; and
- A statement that the levying creditor either does not have any other levy in process or, if another levy is in process, that the levy creditor believes in good faith that the total value of the property under execution does not exceed the amount of outstanding judgments.

Proposed Changes

The bill amends s. 56.21, F.S., to require creditors attempting to levy on real property to supply an affidavit notice of which must be made to the property owner and other persons who hold a mortgage or lien against the real property.

This bill amends s. 56.27(4), F.S., to create specific information that must be provided in an affidavit, used in connection with the levy on real property. The affidavit must state that the levying creditor has performed or reviewed a title search of the records of the clerk of court of the county where the property is situated and that the information contained in the affidavit based on this review or title search is true and correct. The affidavit must also include the information contained in the certified copy of recordation of lien for each lien recorded on real property and the name and address of the lien holders as disclosed by the title search.

The bill further revises s. 56.27, F.S., to provide that for the purpose of the sheriff's distribution of the surplus, the priority of judgment liens on personal property is based on the effective date the judgment lien was acquired under ss. 55.202, 55.204(3), F.S. or 55.208(2), F.S., and the priority of judgment liens on real property is based on the effective date the judgment lien was acquired under s. 55.10(1) and (2), F.S. This bill provides that the surplus be paid in order of priority. However, if the affidavit discloses a recorded mortgage, financing statement, tax warrant or other non-judgment lien which is

⁷ Section 56.27(1), F.S.

⁸ Section 56.27(2), F.S.

⁹ Section 55.203, F.S., provides a judgment lien certificate must contain: the legal name of each judgment debtor; the last known address and social security number or federal employer number of each judgment debtor if shown on the judgment itself; the legal name of the judgment creditor and if a recorded legal entity, then the registered name and document filing number; the address of the judgment creditor; the identity of the court which entered the judgment and the case number and date the written judgment was entered; the amount due on the money judgment and the applicable interest rate; the signature of the judgment creditor or the judgment creditor's attorney or duly authorized representative; and an affidavit if the lien was acquired prior to October 1, 2001.

junior in priority to the levying creditor's lien, then any surplus from the sale of the real property must be paid to the registry of the court.

Service of Process for an Injunction for Protection against Domestic Violence and Sexual Violence

Current Law

Section 741.30, F.S., provides a statutory cause of action for an injunction for protection against domestic violence, which is initiated by a petition by the victim or by family or household members. The petitioner need not be a spouse and need not be represented by an attorney. Upon the filing of the petition, the court is required to set a hearing and the respondent must be personally served with a copy of the petition and other specified documents.¹⁰

Section 741.30(8), F.S., provides that in a domestic violence case where a protective injunction is being sought, a county clerk is required to furnish with the original injunction of protection petition

"a copy of the petition, financial affidavit, Uniform Child Custody Jurisdiction and Enforcement Act affidavit, if any, notice of hearing, and temporary injunction, if any, to the sheriff or a law enforcement agency of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night."

Section 784.046, F.S., provides for a cause of action for an injunction for protection against sexual violence similar to that provided in s. 741.30, F.S. for protection against domestic violence. Section 784.046(8), F.S., also includes the same requirements of the clerk of court found in s. 741.30(8), F.S., discussed above.

Due to the time sensitive nature of obtaining injunctions against domestic violence, the delay in time caused by the requirement to provide the original injunction of protection petition to the respondent may be problematic.

Proposed Changes

This bill amends ss. 741.30(8) and 784.046(8), F.S., to provide that the clerk of court, when requested by the sheriff, may transmit a facsimile copy of an injunction that has been certified by the clerk of court, and this facsimile copy may be served in the same manner as a certified copy. This would allow the facsimiled copy to be served to the respondent sooner. This bill also provides that upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. In addition, if the sheriff is in possession of an injunction for protection that has been certified by the clerk of court, the sheriff may transit a facsimile copy of that injunction to a law enforcement officer who shall serve it in the same manner as a certified copy.

Process Fees

Current Law

Under Florida law, county sheriffs of the state must charge fixed, nonrefundable fees for the service of process in civil actions as established by a statutory schedule.¹¹ All fees collected under the statutory provisions for sheriffs' fees for service of process are to be paid monthly into the county's fine and forfeiture fund.¹²

In addition, special and certified process servers may charge any reasonable fee for services, which can be more or less than the statutorily set fee for sheriffs.¹³ Section 30.231, F.S., provides that the

¹⁰ Section 741.30(4), F.S.

¹¹ Section 30.231, F.S.

¹² Section 30.231(5), F.S.

¹³ See s. 48.021(2)(a), F.S.; see also ss. 48.27(1) and 48.29, F.S.

sheriff must charge \$20 for service of summons or writs except for executions and \$20 for each witness to be served.¹⁴ The sheriff's office must keep files and index these orders. For executions, the sheriff must charge \$20 for docketing and indexing each writ of execution, \$20 for advertisement of the sale of property under process, \$20 for each sale under process, and \$20 for each deed, bill of sale or satisfaction of judgment.¹⁵ However, if an execution is unsatisfied, a sheriff may return the writ to the court 20 years after the date of issuance of final judgment.¹⁶

Fees for service of process, summons, and executions have not been addressed by the Legislature since 1994, according to a 2005 Senate Interim Project Report by the Committee on Justice Appropriations.¹⁷ The report considered the fees using, among other indicators, the Consumer Price Index (CPI), which measures the average change over time in prices paid for consumer goods and services. Survey data of county sheriffs' offices compiled by the Florida Senate Committee on Justice Appropriations indicated that sheriffs acting as process servers require an average of four attempts to serve a party for an average cost of \$37.¹⁸

When service of process for a defendant is returned not effected, or returned improperly executed, the party issuing it is entitled to the additional process against the unserved party as is necessary to effect service.¹⁹ Currently, Florida law prohibits sheriffs from charging additional fees for second or third attempts at service when initial efforts to serve process were unsuccessful.²⁰

Proposed Changes

This bill amends s. 30.321, F.S., to increase sheriff's fees to \$40 from \$20 for service for summons or writs (except executions) and witness subpoenas. In addition, this bill increases the fees charged by sheriffs to \$40 from \$20 to docket and index each writ of execution; advertise sales under process; conduct each sale under process; and prepare each deed, bill of sale, or satisfaction of judgment.

Although the sheriff's service of process fee is increased, the bill exempts the State of Florida or its agencies from the increase in fees. The bill provides that the fees applicable to the state and its agencies will be those in place on June 20, 2009, which is the day before the new law takes effect.

The bill also removes the provision that prohibits the sheriff from charging additional fees for subsequent attempts at service when it was not accomplished on the first attempt. The effect of the removal of this provision in the bill is that the sheriffs will now be able to charge the party requesting services for each additional attempt at service if the service attempt is initially unsuccessful.

B. SECTION DIRECTORY:

Section 1 amends s. 30.231, F.S., relating to Sheriff's fees for service of summons, subpoenas and executions.

Section 2 amends s. 48.021, F.S., relating to the types of process required to be served by the sheriff.

Section 3 amends s. 48.27, F.S., relating to certified process servers.

Section 4 amends s. 56.041, F.S., relating to civil execution orders.

Section 5 amends s. 56.21, F.S., relating to notice of execution sales.

¹⁴ Section 30.231(1)(a) and (c), F.S.

¹⁵ Section 30.321(1)(d), F.S.

¹⁶ Section 56.041(2), F.S.

¹⁷ See Florida Senate, Committee on Justice Appropriations, *Sheriff Costs -- Service of Process*, Interim Project Report 2006-144, at 1 (August 2005). The "[b]asic data relating to increases in the consumer price index, gasoline prices, and wages for deputy sheriffs since 1994 indicate the probability that sheriff's costs to serve process have risen substantially."

¹⁸ See *id.* at 5. The \$37 figure accounts for changes such as increased fuel costs.

¹⁹ Section 30.231, F.S.

²⁰ Section 30.231(4), F.S.

Section 6 amends s. 56.27, F.S., relating to the payment of money collected under an execution sale.

Section 7 amends s. 741.30, F.S., relating to injunctions for protection from domestic violence.

Section 8 amends s. 784.046, F.S., relating to injunctions for protection from repeat, sexual, or dating violence.

Section 9 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Beyond fiscal year 2009-10, the Revenue Estimating Conference has determined that the provisions of this bill will have the following positive fiscal impact on local governments:

- \$38.8 million in FY 2010-11;
- \$39.1 million in FY 2011-12, and
- \$39.7 million in FY 2012-13.

2. Expenditures:

This bill appears to have an indeterminate and likely minimal fiscal impact on local government expenditures. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By increasing the service of process fees, this bill may increase the cost to persons paying a sheriff or certified and special process server for service of process. According to the Florida Association of Professional Process Servers, it is likely that the certified and special process servers will increase their fees to reflect the increases in fees for sheriffs.

D. FISCAL COMMENTS:

This bill will increase the fees that are collected by sheriffs for carrying out service of process, which will increase county revenues by an unknown amount. According to the Florida Association of Professional Process Servers, it is likely that the certified and special process servers will increase their fees to reflect the increases in fees for sheriffs. If certified and special process servers do not increase their fees to reflect the increase in fees for sheriffs, then sheriffs may see a decrease in revenues related to service of process. However, they may also realize a corresponding reduction in expenditures due to decreased demand for services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

N/A